IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1179 of 1998

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JIVANSINH MOHANSINH GOHEL

Versus

GSRTC

Appearance:

MR MUKESH H RATHOD for Petitioner No. 1

MRS UTPALA BORA for MR YOGESH S LAKHANI for Respondent

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 01/07/2004

ORAL JUDGEMENT

1. The petitioner was working as Depot Manager with the respondent Corporation. When the petitioner was working as such at Mahudha Depot, on 9.6.1994 there was a theft of Rs.2,08,477.75 ps from the Cash Box at the said Depot. Therefore the petitioner was suspended vide order dated 15.6.1994 which came to be revoked by order dated 13.8.1994. A departmental inquiry was held against the

petitioner which resulted into passing an order dated 10.5.1995 imposing punishment of three increments with cumulative effect and for recovery of Rs.72191.10 along with 18% interest, the total of which comes to Rs.84103.10. The said order was challenged by the petitioner in Departmental Appeal which was dismissed by order dated 17.4.1996. The Second Appeal filed by the petitioner also came to be dismissed by order dated 27.10.1997. Hence the present petition.

2. While admitting this matter this matter was directed to be heard along with SCA No.1896/97. However, the said matter was heard separately and disposed of by judgement and order dated 18th March 2004. It is also stated that the said petition pertained to other employees and not connected with the controversy involved in the present petition.

3. Learned counsel for the petitioner submitted that the disciplinary authority in his order at Annexure-J dated 10.5.1995 has imposed double penalty viz. stoppage of three increments with future effect and recovery of Rs.84103.10ps i.e. 40% of the total amount involved in the incident which had taken place on 10th June 1994. He contended that the authority could have imposed only one penalty either to recover the amount for the negligence of the petitioner or the penalty prescribed under the rules.

4. Learned counsel for the respondent submitted that the order passed by the authority is just and proper in view of the fact that due to the negligence of the petitioner the Corporation suffered a loss to the tune of Rs.2,08,477.75ps, whereas only 40% of the said amount is ordered to be recovered from the petitioner. He therefore submitted that the authority is justified in imposing the penalty.

5. I have heard the learned counsel for the respective parties and perused the relevant documents. In my opinion the punishment of recovery of 40% of the total amount and imposition of stoppage of 3 increments with future effect is not in consonance with the alleged negligence of the petitioner. In fact this would amount to double penalty. Looking to the peculiar facts and circumstances of the case, I am of the opinion that recovery of Rs.84103.10 from the petitioner would meet the ends of justice.

6. In the result, the petition is partly allowed. The imposition of penalty of stoppage of three increments

is quashed and set aside. The order dated 10.5.1995 is modified to the aforesaid extent. The respondent shall pay the consequential arrears to the petitioner within three months from today. Rule is made absolute to the aforesaid extent. No order as to costs.

[K.S. JHAVERI, J.]

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